

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BETTY GUZMAN, et al.,	)	Civil No.11-0069-WQH(WVG)
	)	
Plaintiffs,	)	ORDER DENYING PLAINTIFF'S
	)	APPLICATION TO COMPEL
v.	)	DEPOSITION OF PERSON MOST
	)	KNOWLEDGEABLE
BRIDGEPOINT EDUCATION,	)	
INC., et al.,	)	
Defendants.	)	

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On April 23, 2014, counsel submitted to the Court a Joint Statement For Determination of discovery Dispute ("Joint Statement"). In the Joint Statement, Plaintiff seeks to compel Defendants to produce for deposition the person most knowledgeable on a number of topics. Defendants oppose Plaintiff's Application.

I

BACKGROUND

On November 22, 2013, Plaintiff served on Defendants a Request for Production of Documents. Defendants agreed to produce to Plaintiff documents responsive to the Requests for Production of Documents. On February 24,

1 2014, Defendants produced responsive documents to Plain-  
2 tiff. Subsequently, Defendants produced more documents to  
3 Plaintiff in three separate productions. The last produc-  
4 tion of documents occurred on March 12, 2014.

5 On March 19, 2014, Plaintiff served on Defendants a  
6 Deposition Notice pursuant to Fed. R. Civ. P. 30(b)(6)  
7 ("March 19, 2014 Deposition Notice" or "Deposition No-  
8 tice") for a deposition to be taken on March 28, 2014.<sup>1/</sup> On  
9 March 24, 2014, Defendants served on Plaintiff their  
10 objections to the March 19, 2014 Deposition Notice.  
11 Defendants objected that the testimony sought by the  
12 Deposition Notice was irrelevant to any issues pertaining  
13 to class certification. Further, Defendant objected that  
14 the notice provided was unreasonable in light of the scope  
15 of the deposition topics listed in the Deposition Notice,  
16 since Plaintiff had never requested documents from Defen-  
17 dants regarding the deposition topics listed in the  
18 Deposition Notice. Defendants contend that the Deposition  
19 Notice was a request for production of documents that  
20 failed to comply with the 30-day notice requirement  
21 required by Fed. R. Civ. P. 34.

## 22 II

### 23 APPLICABLE LAW

24 Fed R. Civ. P. 30(b) states in pertinent part:

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<sup>1/</sup>On March 13, 2014, Plaintiff also served on Defendants another Deposition  
28 Notice pursuant to Fed. R. Civ. P. 30(b)(6) ("March 13, 2014 Deposition Notice").  
The March 13, 2014 Deposition Notice is not at issue in this discovery dispute and  
was not provided to the Court.

1 (1) A party who wants to depose a person by  
 2 oral questions must give *reasonable notice* to  
 every other party (of the deposition)...

3 (2) ... The notice to a party deponent may be  
 4 accompanied by a request (for production of  
 documents) *under Rule 34* to produce docu-  
 ments... at a deposition...

5 (6) In its notice..., a party may name as the  
 6 deponent a private... corporation..., and must  
 describe with reasonable particularity the  
 matters for examination...  
 (emphasis added).

7 Fed. R. Civ. P. 34(b)(2) states in pertinent part:

8 "The party to whom the request (for production of docu-  
 9 ments) is directed must respond... within 30 days after  
 10 being served."

### 11 III

### 12 DISCUSSION

#### 13 A. Relevance

14 Plaintiff argues that the topics listed in the March  
 15 19, 2014 Deposition Notice are relevant to class certifi-  
 16 cation issues. Defendants argue that the topics are not  
 17 relevant to any issue of class certification.

18 The Court finds that the information requested in  
 19 the Deposition Notice is relevant to whether there are  
 20 questions of law or fact common to the proposed class. The  
 21 information is relevant to show what representations were  
 22 made to Defendants' students, if any, prior to their  
 23 enrollment in Defendants' school, and the basis of any  
 24 such representations. Defendants' arguments to the con-  
 25 trary are not well taken. That information may be, or may  
 26 not be, relevant is not a ground for refusing to appear  
 27 at, and give testimony at, a properly noticed deposition.  
 28

1 RTC v. Dabney, 73 F.3d 262, 266 (10<sup>th</sup> Cir. 1995), In re  
 2 Uehling, 2013 WL 3283212 at \*9 (E.D. Cal. 2013).

3 B. Reasonable Notice

4 Fed. R. Civ. P. 30(b)(1) requires that a party  
 5 seeking a deposition give "reasonable notice" of the  
 6 deposition. Courts construe "reasonable notice" to be five  
 7 days, if the deposition notice does not require production  
 8 of documents at the deposition. Millennium Labs, Inc. v.  
 9 Allied World Assur. Co., 2014 WL 197744 at \*2, n. 1 (S.D.  
 10 Cal. 2014), Pac. Mar. Freight, Inc. v. Foster, 2013 WL  
 11 6118410 at \*2, n. 2 (S.D. Cal. 2013). However, when the  
 12 deposition notice requires production of documents at the  
 13 deposition, Rule 30(b)(2) dictates that "reasonable  
 14 notice" is provided as stated in Rule 34. Rule 34(b)(2)  
 15 states that the party to whom a request for production of  
 16 documents is directed must respond within 30 days after  
 17 service of the request. Ghosh v. Cal. Dept. of Health  
 18 Services, 50 F.3d 14 (9<sup>th</sup> Cir. 1995).

19 Here, Plaintiff's Deposition Notice was served on  
 20 March 19, 2014 for a deposition to be taken on March 28,  
 21 2014. The time between March 19, 2014 and March 28, 2014  
 22 is nine days. Therefore, Plaintiff's Deposition Notice, to  
 23 the extent it did not request production of documents at  
 24 the deposition, was timely and reasonable.

25 Plaintiff argues that her Deposition Notice provides  
 26 "reasonable notice" to Defendants of the deposition, that  
 27 the Deposition Notice does not request production of  
 28 documents at the deposition, and that she was justified in

1 serving the Deposition Notice on March 19, 2014 because  
2 she received the last set of Defendants' production of  
3 documents on March 12, 2014.

4 Defendants argue that since Plaintiff had not  
5 previously requested the production of documents regarding  
6 many, if not all, of the topics<sup>2/</sup> listed in the Deposition  
7 Notice, the Deposition Notice was an untimely and veiled  
8 attempt to circumvent the requirements of Rule 34(b)(2).  
9 Therefore, the Deposition Notice did not provide the  
10 "reasonable notice" required by Rule 30(b)(1) since only  
11 nine, and not 30 days, notice was provided. Further,  
12 Defendants argue that even though they produced their last  
13 set of documents to Plaintiff on March 12, 2014, Plaintiff  
14 knew, or should have known, that she needed documents and  
15 testimony regarding the topics listed in the Deposition  
16 Notice long before March 19, 2014.

17 The Court agrees with Defendants. Plaintiff does not  
18 dispute that she did not previously seek from Defendant  
19 documents regarding the topics listed in the Deposition  
20 Notice. Moreover, Plaintiff acknowledges that if a depo-  
21 nent must produce documents at the deposition, then "the  
22 notice must comply with the thirty-day notice under Rule  
23 34." (Joint Statement at 4, ll. 13-14). Defendants also  
24 explain the time and effort necessary in preparing their  
25 witness for this deposition. (Joint Statement at 9, ll.

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27 <sup>2/</sup>The Deposition Notice seeks testimony regarding Defendants' reports and  
28 studies comparing and contrasting students at for-profit schools with students at  
non-profit schools regarding tuition fees, job placement, student debt, student  
default rates, the dates of such reports and studies, and their findings and  
conclusions.

1 22-26). Therefore, it is difficult, if not impossible, to  
2 see how a person designated by Defendants to testify about  
3 the topics would be able to truthfully and accurately do  
4 so without having at the deposition the documents that  
5 pertain to the topics listed in the Deposition Notice.

6 The Court determines that the Deposition Notice is  
7 a thinly veiled attempt to evade the 30 day response  
8 requirement for production of documents at a deposition,  
9 as required by Fed. R. Civ. P. 34(b)(2). Consequently,  
10 Plaintiff failed to give "reasonable notice" of the  
11 deposition and failed to comply with Rule 30(b)(1) and (2)  
12 and 34(b)(2). Moreover, the discovery cut-off deadline  
13 expired on March 31, 2014 and Plaintiff's Motion for Class  
14 Certification is due on April 30, 2014. Even if Plain-  
15 tiff's Deposition Notice gave "reasonable notice" of the  
16 deposition, which it did not, Plaintiff would have been  
17 unable to take the deposition before the expiration of  
18 discovery on March 31, 2014.

19 One final point to mention is the lack of urgency  
20 demonstrated by the parties, especially Plaintiff. While  
21 the parties complied with the Court's Local and Chambers  
22 rules to meet and confer to resolve their dispute and  
23 failing that, to file their Joint statement within 30  
24 days, the parties lost sight of the now-past discovery  
25 deadline and the looming deadline to file the Motion for  
26 Class Certification. Realizing that these two deadlines  
27 were rapidly approaching when the dispute arose, the Court  
28 would have expected the parties, especially Plaintiff, to

1 react with far more alacrity than what was displayed here.  
2 Choosing instead to file the Joint Statement right at the  
3 very deadline of the 30-day window, the parties, espe-  
4 cially Plaintiff, now must face the consequence of their  
5 dilatory actions.

6 In Wong v. Regents of the University of California,  
7 410 F.3d 1052, 1060, 1062 (9<sup>th</sup> Cir. 2005), the court  
8 stated:

9 In these days of heavy caseloads, trial  
10 courts... routinely set schedules and estab-  
11 lish deadlines to foster the efficient treat-  
12 ment and resolution of cases. Those efforts  
13 will be successful only if the deadlines are  
14 taken seriously by the parties, and the best  
15 way to encourage that is to enforce the dead-  
16 lines. Parties must understand that they will  
17 pay a price for failure to comply strictly  
18 with scheduling and other orders, and that  
19 failure to do so may properly support severe  
20 sanctions and exclusion of evidence...

21 If (Plaintiff) had been permitted to disregard  
22 the deadline..., the rest of the schedule laid  
23 out by the court months in advance, and under-  
24 stood by the parties, would have to have been  
25 altered as well. *Disruption to the schedule of*  
26 *the court and other parties is not harmless.*  
27 Courts set such schedules to permit the court  
28 and the parties to deal with cases in a thor-  
ough and orderly manner, and they must be  
allowed to enforce them, unless there are good  
reasons not to. (emphasis added).

21 See also 02 Micro Intern Ltd. v. Monolithic Power  
22 Systems, Inc., 467 F.3d 1355, 1368-1369 (9<sup>th</sup> Cir. 2006).

23 Plaintiff's Application To Compel The Deposition  
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1 Noticed On March 19, 2014 is DENIED.

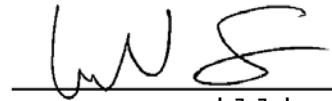
2 IT IS SO ORDERED.

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4 DATED: April 28, 2014

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A handwritten signature in black ink, appearing to read 'WV Gallo', written over a horizontal line.

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Hon. William V. Gallo  
U.S. Magistrate Judge

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